

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DENNIS MONTGOMERY, an individual;
et al.

No. 10-15958

Plaintiffs,

D.C. No. 3:06-cv-00056-PMP-VPC
District of Nevada, Reno

ETREPPID TECHNOLOGIES, a Nevada
LLC; et al.,

Defendants

vs.

TERI PHAM,
Appellant,

and

MICHAEL FLYNN

Movant - Appellee.

DENNIS MONTGOMERY, an individual;
et al.

No. 10-15960

Plaintiffs,

D.C. No. 3:06-cv-00056-PMP-VPC
District of Nevada, Reno

DEBORAH A. KLAR,

Movant - Appellant

vs.

ETREPPID TECHNOLOGIES, a Nevada
LLC; et al.,

and

MICHAEL FLYNN

Movant - Appellee.

1

JOINT MOTION FOR APPROVAL OF SETTLEMENT

AND FOR REMAND TO DISTRICT COURT WITH

INSTRUCTIONS TO TERMINATE MAGISTRATE PROCEEDINGS

2

3 Pursuant to Fed. R. App. Proc. 33 Appellee Michael Flynn, and Appellants Deborah Klar
 4 and Teri Pham (hereafter collectively referred to as the "Parties"), through their undersigned
 5 counsel, hereby move this Court for an order approving the settlement entered into between them
 6 and the law firm of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP (the
 7 "Liner Firm"). As required by that settlement, the Parties further move this Court for an order
 8 remanding these matters to the United States District Court for the District of Nevada with
 9 instructions to terminate with prejudice and take no further action with respect to or arising out
 10 of the magistrate proceedings against Deborah A. Klar, Teri T. Pham and the Liner Firm or the
 11 facts and circumstances on which they were based. The Parties base this motion upon the
 12 pleadings and papers on file herein, the confidential settlement agreement and the attached
 13 Memorandum of Points and Authorities.

14

MEMORANDUM OF POINTS AND AUTHORITIES

15

16 The Parties are litigants in these consolidated appeals, which arise out of a March 31,
 17 2009 order entered by Magistrate Judge Valerie Cooke purporting to sanction Klar, Pham, the
 18 Liner Firm, and Dennis Montgomery (the "Magistrate Proceedings") in the matter entitled
 19 Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)). The
 20 order was stayed by its own terms and later vacated by the District Court with respect to the
 21 Liner Firm, Klar, and Pham.¹

22

23 Flynn has also brought an action for malicious prosecution and other claims against Klar,
 24 Pham, and the Liner Firm, the appeal of which is pending in this Court as Case No. 11-16912

25

26 The District Court affirmed the sanctions order with respect to Dennis Montgomery on
 27 April 5, 2010, and entered judgment against him on July 8, 2010. A separate judgment was
 28 previously entered against Dennis Montgomery, Brenda Montgomery, and the Montgomery
 Family Trust on December 16, 2008 in the same matter, Montgomery v. eTreppid Technologies
 (District Court No. 3:06-CV-0056-PMP (VPC)). No appeal has been taken from any of these
 judgments. This Joint Motion and its associated settlement are not intended in any way to affect
 the validity and enforceability of these judgments in favor of Mr. Flynn.

1 (the "Malicious Prosecution Matter"). The District Court dismissed the claims asserted in the
2 Malicious Prosecution Matter without leave to amend.

3 Pursuant to this Court's order, on March 16, 2012, the Parties and the Liner Firm
4 conducted a global mediation with Circuit Court Mediator Ann Julius addressing both the
5 Magistrate Proceedings and the Malicious Prosecution Matter. At the conclusion of the
6 mediation, the Parties and the Liner Firm reached a global settlement encompassing both
7 matters. The terms of the settlement are confidential, but the Parties are at liberty to advise this
8 Court that the settlement resolves all litigation involving the Parties and the Liner Firm in both
9 the Magistrate Proceedings and the Malicious Prosecution Matter. A key requirement of the
10 settlement is that the Parties and the Liner Firm must dismiss the appeal of the Malicious
11 Prosecution Matter, and obtain the termination, as requested in this motion, of the Magistrate
12 Proceedings in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP
13 (VPC)).
14

16 The Parties and the Liner Firm wish to resolve their differences, and are content with the
17 terms of the settlement. Accordingly, the Parties respectfully move this Court for its order
18 approving the confidential settlement and remanding these matters to the district court with
19 instructions to terminate with prejudice and take no further action with respect to or arising out
20 of the Magistrate Proceedings in Montgomery v. eTreppid Technologies (District Court No.
21 3:06-CV-0056-PMP (VPC)) or the facts and circumstances on which it is based as to Klar,
22 Pham, and the Liner Firm.²
23

WHEREFORE, the Parties pray for the order of the Court:

24 (1) approving the confidential settlement reached by the Parties and the Liner Firm;
25 and
26

27
28 ² The Parties and the Liner Firm will file a separate stipulation to dismiss related appeal
No. 11-16912.

(2) remanding Case Nos. 10-15958 and 10-15960 to the District Court with instructions to terminate with prejudice and take no further action with respect to or arising out of the Magistrate Proceedings in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or the facts and circumstances on which it is based as to Klar, Pham, and the Liner Firm. This order shall have no effect on any existing judgment entered in favor of Michael J. Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or otherwise.

Dated this 11th of May, 2012 JONES VARGAS

JONES VARGAS

By:

Gary R. Goodheart, Esq.
Attorneys for Deborah A. Klar

Dated this _____ of May, 2012

McDONALD CARANO WILSON, LLP

By:

Debbie A. Leonard, Esq.
Attorneys for Teri T. Pham

Dated this ____ of May, 2012

CHRISTOPHER J. CONANT, ESQ.

By:

Christopher J. Conant, Esq.
Attorney for Michael Flynn

Dated this _____ of May, 2012

LINER GRODE STEIN YANKELEVITZ
SUNSHINE REGENSTREIF & TAYLOR LLP

By:

Ellyn S. Garafolo, Esq.

Attorneys for Non-Appealing Defendant Liner Grode Stein Yankelevitz Sunshine Regenstreich & Taylor LLP in Case No. D.C. No. 3:06-cv-00056-PMP-VPC (D. Nev.)

1 (2) remanding Case Nos. 10-15958 and 10-15960 to the District Court with
2 instructions to terminate with prejudice and take no further action with respect to
3 or arising out of the Magistrate Proceedings in Montgomery v. eTreppid
4 Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or the facts and
5 circumstances on which it is based as to Klar, Pham, and the Liner Firm. This
6 order shall have no effect on any existing judgment entered in favor of Michael J.
7 Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery
8 Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-
9 CV-0056-PMP (VPC)) or otherwise.

10 Dated this 25 of May, 2012

JONES VARGAS

11 By:

Gary R. Goodheart
12 Gary R. Goodheart, Esq.
13 Attorneys for Deborah A. Klar

14 Dated this _____ of May, 2012

15 McDONALD CARANO WILSON, LLP

16 By:

17 Debbie A. Leonard, Esq.
18 Attorneys for Terti T. Pham

19 Dated this _____ of May, 2012

20 CHRISTOPHER J. CONANT, ESQ.

21 By:

22 Christopher J. Conant, Esq.
23 Attorney for Michael Flynn

24 Dated this _____ of May, 2012

25 LINER, GRODE, YANKELEVITZ, SUNSHINE,
26 REGENSTREIF & TAYLOR, LLP

27 By:

28 Ellyn S. Garafoalo, Esq.
Attorneys for Non-Appealing Defendant Liner,
Grode, Yankelevitz, Sunshine, Regenstreif & Taylor.

1 (2) remanding Case Nos. 10-15958 and 10-15960 to the District Court with
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6 order shall have no effect on any existing judgment entered in favor of Michael J.
7 Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery
8 Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-
9 CV-0056-PMP (VPC)) or otherwise.

10 Dated this _____ of May, 2012 JONES VARGAS

11 By:

12 Gary R. Goodheart, Esq.
13 Attorneys for Deborah A. Klar

14 Dated this 24th of May, 2012 McDONALD CARANO WILSON, LLP

15 By:

16 Debbie Leonard
17 Debbie A. Leonard, Esq.
18 Attorneys for Teri T. Pham

19 Dated this _____ of May, 2012 CHRISTOPHER J. CONANT, ESQ.

20 By:

21 Christopher J. Conant, Esq.
22 Attorney for Michael Flynn

23 Dated this _____ of May, 2012

24 LINER GRODE STEIN YANKELEVITZ
25 SUNSHINE REGENSTREIF & TAYLOR LLP
26 By:

27 Ellyn S. Garafoolo, Esq.
28 Attorneys for Non-Appealing Defendant Liner
Grode Stein Yankelevitz Sunshine Regenstreif &
Taylor LLP in Case No. D.C. No. 3:06-cv-00056-
PMP-VPC (D. Nev.)

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7 Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery
8 Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-
9 CV-0056-PMP (VPC)) or otherwise.

10 Dated this _____ of May, 2012 JONES VARGAS

11 By: _____

12 Gary R. Goodheart, Esq.
13 Attorneys for Deborah A. Klar

14 Dated this _____ of May, 2012 McDONALD CARANO WILSON, LLP

15 By: _____

16 Debbie A. Leonard, Esq.
17 Attorneys for Teri T. Pham

18 Dated this 25th of May, 2012 CHRISTOPHER J. CONANT, ESQ.

19 By: _____

20 Christopher J. Conant, Esq.
21 Attorney for Michael Flynn

22 Dated this _____ of May, 2012 LINER, GRODE, YANKELEVITZ, SUNSHINE,
23 REGENSTREIF & TAYLOR, LLP

24 By: _____

25 Ellyn S. Garafolo, Esq.
26 Attorneys for Non-Appealing Defendant Liner,
27 Grode, Yankelevitz, Sunshine, Regenstreif & Taylor,

1 (2) remanding Case Nos. 10-15958 and 10-15960 to the District Court with
2 instructions to terminate with prejudice and take no further action with respect to
3 or arising out of the Magistrate Proceedings in Montgomery v. eTreppid
4 Technologies (District Court No. 3:06-CV-0056-PMP (VPC)) or the facts and
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7 Flynn against Dennis Montgomery, Brenda Montgomery, or the Montgomery
8 Family Trust in Montgomery v. eTreppid Technologies (District Court No. 3:06-
9 CV-0056-PMP (VPC)) or otherwise.

10 Dated this _____ of May, 2012

JONES VARGAS

12 By:

13 Gary R. Goodheart, Esq.
14 *Attorneys for Deborah A. Klar*

15 Dated this _____ of May, 2012

16 McDONALD CARANO WILSON, LLP

17 By:

18 Debbie A. Leonard, Esq.
19 *Attorneys for Teri T. Pham*

20 Dated this _____ of May, 2012

21 CHRISTOPHER J. CONANT, ESQ.

22 By:

23 Christopher J. Conant, Esq.
24 *Attorney for Michael Flynn*

25 Dated this _____ of May, 2012

26 LINER GRODE STEIN YANKELEVITZ
27 SUNSHINE REGENSTREIF & TAYLOR LLP

28 By: ~~Elyn S. Garafolo, Esq.~~
*Attorneys for Non-Appealing Defendant Liner
Grode Stein Yankelevitz Sunshine Regenstreif &
Taylor LLP in Case No. D.C. No. 3:06-cv-00056-
PMP-VPC (D. Nev.)*

1 Dated this 28 of June, 2012

LAXALT & NOMURA, LTD.

2 By:

3 Daniel T. Hayward, Esq.

4 *Attorneys for Appellee Liner Grode Yankelevitz*
5 *Sunshine Regenstreif & Taylor, LLP in related*
6 *Appeal No. 11-16912 (the "Malicious Prosecution*
7 *Matter")*

8 Dated this 28 of June, 2012

9 LEMONS, GRUNDY & EISENBERG

10 By:

11 David Grundy, Esq.

12 Alice Campos Mercado, Esq.

13 *Attorneys for Appellees Deborah A. Klar and Teri*
14 *T. Pham in related Appeal No. 11-16912 (the*
15 *"Malicious Prosecution Matter")*

16 Dated this _____ of June, 2012

17 By:

18 Ronald Logar, Esq.

19 Eric A. Pulver, Esq.

20 LOGAR PULVER

21 - and -

22 Peter Chase Neumann, Esq.

23 - and -

24 Christopher J. Conant, Esq.

25 *Attorneys for Appellant Michael J. Flynn, Esq. in*
26 *related Appeal No. 11-16912 (the "Malicious*
27 *Prosecution Matter")*

1 Dated this 28 of June, 2012

LAXALT & NOMURA, LTD.

2 By:

3 Daniel T. Hayward, Esq.
4 *Attorneys for Appellee Liner Grode Yankelevitz*
5 *Sunshine Regenstreif & Taylor, LLP in related*
6 *Appeal No. 11-16912 (the "Malicious Prosecution*
7 *Matter")*

8 Dated this _____ of June, 2012

9 LEMONS, GRUNDY & EISENBERG

10 By:

11 David Grundy, Esq.
12 Alice Campos Mercado, Esq.
13 *Attorneys for Appellees Deborah A. Klar and Teri*
14 *T. Pham in related Appeal No. 11-16912 (the*
15 *"Malicious Prosecution Matter")*

16 Dated this 2nd of June, 2012 *JW*

17 By:

18 Ronald Logar, Esq.
19 Eric A. Pulver, Esq.
20 LOGAR PULVER

21 - and -

22 Peter Chase Neumann, Esq.

23 - and -

24 Christopher J. Conant, Esq.

25 *Attorneys for Appellant Michael J. Flynn, Esq. in*
26 *related Appeal No. 11-16912 (the "Malicious*
27 *Prosecution Matter")*